

SCDC POLICY/PROCEDURE

NUMBER: OP-22.15

TITLE: INMATE GOVERNANCE

ISSUE DATE: November 8, 2013

RESPONSIBLE AUTHORITY: Division of Operations

OPERATIONS MANUAL: OPERATIONS

SUPERSEDES: OP-22.15 (July 1, 2006); (July 1, 2001)

RELATED SCDC FORMS: NONE

ACA/CAC STANDARDS: 4-ACRS-2B-01 (M), 4-ACRS-6B-01, 4-ACRS-6B-01,4-4182, 4-4206, 4-4277, 4-4281

STATE/FEDERAL STATUTES: 24-13-10, South Carolina Code of Laws, 1976, as amended; Article I, Section 19, and Article VIII, United States Constitution

PURPOSE: To provide guidelines regarding the Agency's position as it relates to corporal punishment, inmate governance, and inmate freedom from discrimination.

POLICY STATEMENT: To promote the Agency's mission, the following mandates will be adhered to by all employees: (1) no inmate will be discriminated against on the basis of his/her race, religion, national origin, sex, political beliefs, age, or disability (except that male and female inmates must be housed in separate facilities or separate units of the same facility); (2) no inmate will be subjected to any type or form of corporal punishment; and (3) no inmate will be placed in a position of control or authority over another inmate(s). (4-ACRS-2B-01, 4-ACRS-6B-01, 4-ACRS-6A-03, 4-4182, 4-4206, 4-4277, 4-4281)

GENERAL PROVISIONS:

1. The use of corporal punishment on or against any inmate either by or at the direction of any employee of the South Carolina Department of Corrections (SCDC) will be considered illegal and will not be tolerated under any circumstances.

2. Instruments of restraint (e.g., leg irons or cuffs, handcuffs, belly chains or waist-cuffs, straight-jackets, restraint chair, etc.) will never be applied to any inmate as punishment and will only be used by staff to protect the safety and security of the inmate, public, employees, and others, and only in strict compliance

with Agency directives and applicable state and federal statutes.

3. The use of physical force by any employee will be limited to instances of justifiable self-defense, protection of others, protection of property, prevention of escapes, and only as a last resort in accordance with appropriate state and federal statutes and case law. Under no circumstances will physical force be used as punishment against any inmate. All occasions and circumstances involving the use of force will be reported in writing for documentation, information, and review as specified in SCDC Policy/Procedure OP-22.01, "Use of Force and Restraints." (4-4206)

4. Inmates will not be discriminated against on the basis of their race, religion, national origin, sex, age, disability, or political beliefs for any institutional assignments, services, facilities, housing program opportunities, work assignments, or any other administrative decisions. All decisions affecting inmates will be made based on security and medical status, space availability, and other related objective criteria. All inmates will be provided equal access to various programs and work assignments for which they are qualified. Inmates will be provided a safe and sanitary place to live and work and will always be addressed by their respective names.

#### 4.1 NONDISCRIMINATION ON THE BASIS OF DISABILITY:

4.1.1 It is the policy of SCDC, its officers, employees, agents, and contractors, that qualified inmates with disabilities must not be excluded from participation in, or be denied the benefits of SCDC's services, programs, activities, or otherwise be subjected to discrimination, because of their disabilities. Individuals with disabilities can include, for example, individuals who are blind, deaf, have substantial difficulty walking, have HIV, learning impairment, or psychiatric condition.

4.1.2 In order for inmates with disabilities to participate in SCDC services, programs, and activities, SCDC may need to make reasonable changes (modifications) in policies, practices, and procedures; to provide auxiliary aids and services needed for effective communication (e.g., large print materials for someone with a visual disability, interpreter for someone who is deaf); and to relocate programs, alter facilities, and provide different means of access. It is SCDC's policy to provide services, programs, and activities to inmates with disabilities in the most integrated setting appropriate for them.

4.1.3 SCDC prohibits retaliation, coercion, intimidation, threats, harassment, or interference with the rights of inmates with disabilities, including the rights to request modifications in policies, practices, and procedures or auxiliary aids and service; to request to participate in services, programs, and activities; to file grievances, complaints, and lawsuits and to participate in investigation and resolution of complaints. Failure to comply with this policy may result in disciplinary action.

#### 4.2 NONDISCRIMINATION ON THE BASIS OF HIV:

4.2.1 It is the policy of SCDC, its officers, employees, agents, and contractors, that qualified inmates with HIV must not be excluded from participation in, or be denied the benefits of the services, programs,

activities of SCDC and its Correctional Institutions, or otherwise be subjected to discrimination, because of their HIV. SCDC provides inmates with HIV:

- Housing according to age gender, and custody classification, which shall be made without regard to HIV status, unless medically indicated;
- Privacy and confidentiality of HIV status, and personally identifiable health information, including, but not limited to, testing, diagnosis, treatment, transportation for medical appointments, and counseling;
- The opportunity to participate in any service, program, or activity for which they are qualified, once housing at a particular institution is established. To afford the opportunity for inmates with HIV to participate in services, programs, and activities, SCDC may be required to, among other things:
- Reasonably modify policies, practices, and procedures when needed to avoid discrimination on the basis of disability;
- Provide auxiliary aids and services (such as large print materials, interpreters, etc.) when needed for effective communication;
- Reassign programs to accessible facilities, assign aides to inmates, and/or make alterations to facilities.
- Access to quality medical treatment, including continuity of care between general correctional practitioners and specialist, antiretroviral therapy, and counseling; and
- Education on HIV, transmission, nondiscrimination on the basis of HIV, and policies impacting inmates with HIV for SCDC staff, and inmates with and without HIV.

SCDC policy prohibits discrimination, harassment, intimidation, interference, and retaliation against inmates with HIV.

NOTE: Not with standing the foregoing, SCDC may implement and maintain legitimate safety requirements necessary for the safe operation of services, programs, or activities. SCDC may implement and maintain procedures to assign inmates to controlled housing or to exclude an inmate from a particular service, program, or activity based upon a determination that the inmate poses a direct threat to the health or safety

of other. A "direct threat" is a significant risk to the health or safety of others that can not be eliminated or reduced to an acceptable level by SCDC's modifications of policies, practices, or procedures. SCDC will only implement legitimate safety requirements or make a direct threat determination the basis of actual risks, and not on mere speculation, stereotypes, or generalizations about inmates with disabilities, including inmates with HIV. In determining whether an inmate poses a direct threat to the health or safety of others, SCDC will make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain the nature, duration, and severity of the risk; the probability that injury will actually occur; and whether reasonable modifications to policies, practices, or procedure will mitigate the risk. SCDC will only make such determination after consulting with medical and mental health personnel and after reviewing guidance from public health authorities. NOTE: Failure to comply with this policy may result in disciplinary action.

5. Under no circumstances will any inmate be placed in a position of control or authority over another inmate(s) to include, but not limited to, hiring, firing, or disciplining another inmate(s). Employees will at all times supervise, control, or exert authority over all inmates under their supervision.

5.1.1 Inmates may be promoted while in work programs, however, the inmate will not be able to supervise other inmates or be left alone on a job site.

6. All non-technical job counseling and/or punitive action(s) directed at any inmate will be taken only by employees, will be based on employee observation and/or investigation, and will adhere to Agency policies and procedures relative to the same.

7. An employee who is found to be in violation of this policy/procedure will be subject to appropriate corrective action, up to and including termination. All allegations against employees who may have violated this policy/procedure will be brought to the attention of the Division Director of Investigations or designee for a determination as to whether a formal investigation is warranted.

#### 8. DEFINITION:

Corporal Punishment refers to any form of cruel and unusual punishment such as, but not limited to: flogging; strapping; beating with fists or clubs; spraying with a stream of water other than to cleanse; stringing up by the wrists; exposing an individual to extreme temperatures of hot or cold; handcuffing an individual to a cell door or post with the exception of one (1) wrist or ankle to a bedrail when in a community hospital; shackling so as to cause a cramped position or cut-off circulation; forcing one to stand for excessive periods of time either on a line, in a circle, etc.; depriving one of food and/or exercise to such a degree that it would impair physical or mental health; depriving one of light or ventilation; or forcing one to remain awake until mentally exhausted.

SIGNATURE ON FILE

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s/ Bryan P. Stirling, Acting Director

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